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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

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Date:

August 31, 2020

LEGEND

Taxpayer =

State =

Year 1 =

Year 2 =

Year 9 =

X =

Y =

Z =

Accounting Firm =

Representative =

Independent Auditor =

Dear :

This letter responds to a letter from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make a regulatory election. Specifically, Taxpayer has requested an extension of time to make an election under § 108(b)(5) of the Internal Revenue Code and § 1.108-4(b) of the Income Tax Regulations, with respect to discharge of indebtedness income, effective for Taxpayer's Year 1 federal income tax return. This

letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer, incorporated in State, files its federal income tax return reporting income on a calendar year and uses the accrual method of accounting. Taxpayer is the common parent of an affiliated group that files consolidated federal income tax returns. In Year 1, Taxpayer completed two debt restructuring transactions that Taxpayer represents resulted in cancelation of indebtedness income in the amount of \underline{x} , and that it was insolvent immediately before the discharge and that the amount of the discharge did not exceed the amount by which Taxpayer was insolvent.

Taxpayer did not have in-house personnel to prepare its federal and state income tax returns and engaged Accounting Firm to prepare its Year 1 federal, state, and local income tax returns. Taxpayer provided all the relevant facts relating to the income from discharge of indebtedness to Accounting Firm. Also, Accounting Firm was engaged (and continues to be engaged) to render an opinion on Taxpayer's financial statements.

Accounting Firm advised Taxpayer that its federal income tax net operating loss would be the first tax attribute to be reduced unless Taxpayer made an election under § 108(b)(5) to first reduce the adjusted tax basis of its depreciable property. After considering its financial and tax projections, Taxpayer determined that it would be beneficial to preserve its net operating loss and reduce its future depreciation deductions. Taxpayer determined that this election would be made and directed Accounting Firm to prepare its Year 1 federal income tax return in a manner consistent with this election.

Taxpayer timely filed its federal income tax return including extension for Year 1. The cancelation of indebtedness income was not reported on Taxpayer's Year 1 federal income tax return. However, Taxpayer's return did not include Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*, which is required to make a valid election under § 108(b)(5). Nor did Taxpayer's return include any other statement setting forth the election under § 108(b)(5) to reduce the basis of depreciable property.

At the beginning of Year 2, consistent with a valid § 108(b)(5) election, Taxpayer reduced the adjusted tax basis of its depreciable fixed assets by \underline{y} and the adjusted tax basis of its amortizable § 197 intangibles by \underline{z} , which equals \underline{x} , the amount of income from cancelation of indebtedness. Taxpayer represents that it had depreciable property (including amortizable § 197 intangibles) with an adjusted tax basis, determined at the beginning of Year 2, in excess of the amount of its cancelation of indebtedness income.

Additionally, Taxpayer has submitted contemporaneously prepared and maintained schedules of tax depreciation and amortization reflecting the reduction of the adjusted tax basis of its depreciable fixed assets and amortizable § 197 intangibles. Taxpayer

did not reduce its net operating loss or any net operating loss carryovers to Year 1 due to the cancelation of indebtedness income in Year 1.

For subsequent taxable years, Taxpayer continued to engage Accounting Firm to prepare its tax returns until a controlling interest in Taxpayer was acquired by an unrelated party. In Year 9, during a due diligence process, it was discovered that Taxpayer failed to file Form 982 to make a valid § 108(b)(5) election to reduce the basis of depreciable property.

Shortly after discovering the failure to file Form 982, Taxpayer's Representative prepared a request for a ruling to grant an extension of time under §§ 301.9100-1 and 301.9100-3 to file Form 982 and to make the election under § 108(b)(5) with respect to its income from cancelation of indebtedness for Year 1.

In separate affidavits, Taxpayer and Accounting Firm represent that Taxpayer had communicated its intention to make the § 108(b)(5) election to Accounting Firm, Accounting Firm was ultimately responsible for making the election, and Form 982 was inadvertently omitted by Accounting Firm from Taxpayer's Year 1 federal income tax return.

The period of limitations on assessment under Code § 6501(a) is closed for at least Year 1 and Year 2. However, Taxpayer has provided a statement from an Independent Auditor as described in §301.9100-3(c)(1)(ii) confirming that the interests of the Government are not prejudiced under the standards contained in § 301.9100-3(c)(i).

LAW AND ANALYSIS

Section 108(a)(1)(B) provides that gross income does not include any amount that would be includible in gross income by reason of the discharge of indebtedness if the discharge occurs while the taxpayer is insolvent.

Section 108(b)(1) provides, in general, that amounts excluded from gross income under § 108(a)(1) will be applied to reduce the tax attributes of the taxpayer as provided in § 108(b)(2).

Section 108(b)(5)(A) permits a taxpayer to elect to apply any portion of the reduction referred to in § 108(b)(1) to the reduction under § 1017 of the basis of the depreciable property of the taxpayer in lieu of applying the order specified in § 108(b)(2).

Section 108(b)(5)(B) limits the amount to which the election in § 108(b)(5)(A) applies to an amount not exceeding the aggregate adjusted basis of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

Section 108(d)(9) provides that an election under § 108(b)(5) is made on the taxpayer's return for the taxable year in which the discharge of indebtedness occurs or at such time and manner as permitted in regulations prescribed by the Secretary.

Section 1.108-4(b) provides, in part, that to make an election under § 108(b)(5), a taxpayer must complete and file Form 982 together with its timely filed (including extensions) federal income tax return for the taxable year in which the taxpayer has discharge of indebtedness income that is excludable under § 108(a).

Sections 301.9100-1 through 301.9100-3 provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer –

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) was fully informed of the required election and related tax consequences, but chose not to file the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Section 301.9100-3(c)(1)(ii) provides that the interest of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(i).

Under the facts submitted by Taxpayer, we conclude that Taxpayer has acted reasonably and in good faith under §301.9100-3(b). In addition, we conclude that granting relief will not prejudice the interests of the government under § 301.9100-3(c).

CONCLUSION

Accordingly, based solely on the facts and information submitted and the representations made in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter to file an amended return to make an election under § 108(b)(5) and § 1.108-4(b) by filing Form 982 for Year 1.

The ruling granted in this letter should not have any effect on amounts reported on Taxpayer's previously filed federal income tax returns, Taxpayer should not file amended returns for such closed years to adjust any amounts and should only file an amended return for Year 1 to make the election under § 108(b)(5).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including whether Taxpayer was, immediately prior to the discharge of its indebtedness in Year 1, insolvent by an amount exceeding the amount of indebtedness discharged and whether Taxpayer properly excluded its income from discharge of indebtedness from its gross income pursuant to §108(a).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being faxed to your authorized representative.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: